

First Supplement to Memorandum 2002-3

Statutes Made Obsolete by Trial Court Restructuring (Discussion of Issues)

The Commission's tentative recommendation has now been introduced in bill form. The constitutional amendment is ACA 15 (Wayne). The statutory revision is SB 1316 (Senate Judiciary Committee). The printed bills should assist interested persons to review and comment on the tentative recommendation.

A committee bill should contain material that is basically unobjectionable. If we receive comments on the tentative recommendation that cannot be readily resolved by drafting or adjustment of a Comment or some other means, we should consider removing it from the committee bill. That material could go into a separate bill or, better, held for further consideration in anticipation of followup legislation at a subsequent legislative session. Typically, the objectionable material will not be ripe for disposition due to a lack of consensus among stakeholders.

The comment deadline on the tentative recommendation is February 15. However, there are a few issues that have surfaced that the Commission can deal with now.

COMPENSATION OF OFFICIAL REPORTER

There appears to be a general consensus among stakeholders in accord with the staff's suggestion in Memorandum 2002-3 that we omit the official reporter compensation statutes from the final recommendation as being not ripe for repeal. We have heard informally to this effect from various working group participants. We also have a communication from the Administrative Office of the Courts to the same effect. See Exhibit p. 1 ("Although it is our interpretation that much of the existing statutory language is obsolete, we recognize that in the absence of consensus among interested parties, the matter is likely not ripe for review.")

Assuming the Commission agrees with the staff suggestion to remove county-specific official reporter compensation statutes from the current draft, the staff will begin the process of implementing that decision. Our intention is to

remove all county-specific superior court official reporter compensation statutes from the draft. County-specific municipal court statutes would generally remain in the draft since they are basically defunct — with the abolition of all municipal courts, the statutes no longer have current relevance.

However, we have heard from one superior court that it would be helpful to keep the former municipal court statute in that county on the books. That court is the Fresno County Superior Court, whose MOU with official reporters is — due to an apparent fluke — keyed to the municipal, rather than superior, court statute. Cf. Gov't Code § 73691:

73691. A majority of the judges may appoint 33 full-time court reporters to serve at the pleasure of the judges and to be paid an annual salary established according to the following salary schedule:

Step 1. \$45,366

Step 2. \$47,640

Step 3. \$49,997

Step 4. \$52,498

Reporters shall initially be placed at step 1 of the salary schedule except reporters may be placed at a higher step with the approval of the county administrative officer, and shall be advanced one step annually upon the anniversary date of that employment. If, because of recruitment difficulties, it is necessary to appoint a court reporter at a step of the salary schedule which is above the step at which any court reporters are currently employed, all court reporters below that step will move to the higher step at the discretion of the judges of the court. Each reporter shall accrue and be entitled to receive sick leave benefits at the rate of 3.6924 hours of sick leave with pay for each pay period or major fraction thereof, served up to an accumulative total of 156 working days. Each reporter shall accrue and receive vacation at the same rate as judges of that court not to exceed 21 working days a year which may be accrued not to exceed 42 days to be taken when the judge to which he or she has been assigned consents.

We have pointed out to the Fresno court that the Commission's proposed legislation would include a saving clause to deal precisely with this type of issue:

SEC. 689. If a right, privilege, duty, authority, or status (including but not limited to a qualification for office, salary range, or employment benefit) is based on a provision of law repealed by this act, and if a statute, order, rule of court, memorandum of understanding, or other legally effective instrument provides that the right, duty, authority, or status continues for a period beyond

the effective date of the repeal, that provision of law continues in effect for that purpose, notwithstanding its repeal by this act.

However, the court personnel in that county would prefer to keep the old law on the books until the MOU has expired.

The **staff has no real problem with preserving this section**. There are many court organization statutes that cannot be cleaned out of the codes just yet. This will be an ongoing process over several legislative sessions. Leaving this particular section on the books for another year or two won't hurt anything, and will facilitate passage of the remainder of the bill through the Legislature.

(Note. There is a lot in that section that probably no one really wants — e.g., the limitation to 33 official reporters, the “at pleasure” character of the official reporters’ tenure, the apparent role of the county administrative officer, etc. However, we would just leave the entire section intact for now, lest a fine-tuned amendment be construed as an implication that the Commission actually believes the section has any real effect. We would need to retain the scope section that defines the application of the law — “This article applies to the municipal court established in the Consolidated Fresno Judicial District, County of Fresno.” Gov’t Code § 73680.)

STATE MANDATED LOCAL PROGRAM

The Legislative Counsel has stated that the tentative recommendation would create a state mandated local program. That means the bill implementing the tentative recommendation would impose new costs or duties on local entities, for which the state must reimburse the local entities. That could complicate the passage of the bill through the Legislature.

The Legislative Counsel has identified two aspects of the tentative recommendation as problematic in this regard — (1) it imposes new duties on the county surveyor and county recorder concerning maps of judicial districts, and (2) it imposes new duties on the county probation department with respect to books of record.

The staff has spoken with Legislative Counsel and convinced them they are in error with respect to maps of judicial districts. Government Code Section 71042.6 — the provision that attracted their attention — continues existing law and does not create any new duties.

The staff has been unable to convince Legislative Counsel concerning duties of the county probation department under Penal Code Section 1203.7. The tentative recommendation would revise that section to read, “Those books of record shall be furnished by the ~~county clerk~~ probation department, and shall be paid for out of the county treasury.” Despite the fact that the county is already responsible for this expense under existing law, and the proposal would merely shift the repository of books of record from one county office to another, Legislative Counsel persists in its position that this change imposes a new “state mandated local program” on counties. **The staff suggests that we simply remove this provision from the recommendation, for now.**

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Exhibit

COMMUNICATIONS CONCERNING MEMORANDUM 2002-3

Administrative Office of the Courts (January 15, 2002)

Subject: Court Reporter Compensation Statutes
Date: Tue, 15 Jan 2002 17:22:27 -0800
From: "Ortega, Claudia" <Claudia.Ortega@jud.ca.gov>
To: "Nat Sterling (E-mail)" <sterling@clrc.ca.gov>

The Administrative Office of the Courts would like to convey our current position regarding the CLRC staff's recent recommendation to not remove or modify current court reporter compensation statutes.

The Administrative Office of the Courts agrees with the CLRC staff's recommendation to leave the existing county-specific statutes regarding court reporter compensation intact and to address them at a later date. We agree with many of the reasons articulated by the Executive Secretary for doing so. Although it is our interpretation that much of the existing statutory language is obsolete, we recognize that in the absence of consensus among interested parties, the matter is likely not ripe for review. We are prepared to work with the Commission towards resolving the status of these county-specific statutes if invited to do so.

Thank you,

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